

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs/Counterclaim
Defendants,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants/Counterclaim
Plaintiffs.

Case No. 09-cv-0686 (ERW)

DUPONT'S SECOND MOTION TO COMPEL

Defendants E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc. (collectively “DuPont”) respectfully move the Court for an order compelling Plaintiffs Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”) to produce certain documents in response to DuPont’s discovery requests.

This motion to compel is directed to the following twelve (12) categories of documents:

- the kinetics of EPSPS enzymes, such as the so-called Class I and II EPSPS enzymes and the relationship of kinetics to glyphosate tolerance in plants;
- use of antibodies to detect and/or distinguish Class I and II EPSPS enzymes;
- use of nucleic acid probes to detect and/or distinguish Class I and II EPSPS enzymes;
- creation and development of Roundup Ready corn event GA21;

- use, identification, characterization and isolation of Agrobacterium strain CP4 bacteria, PG2982 bacteria, LBAA bacteria, *B. subtilis* bacteria and *Staphylococcus aureus* bacteria and other bacteria from the Luling, La. glyphosate production facility;
- cloning, synthesis and use in plants, of DNA sequences that encode an EPSPS enzyme having SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:7, SEQ ID NO:41, SEQ ID NO:42 and the DNA sequence of SEQ ID NO:9;
- technology to transform a plant nucleus with DNA that encodes CP4 EPSPS and select cells and/or regenerate plants so transformed;
- technology to transform a plant plastid with DNA that encodes CP4 EPSPS and select cells and/or regenerate plants so transformed;
- research and development of the first commercializable glyphosate-tolerant plant of each type in claim 148 and col. 33 lines 48-61 of the '247 Patent, and of any plant type Monsanto attempted to make glyphosate tolerant but did not commercialize;
- crop yield of glyphosate treated plants containing a CP4 EPSPS enzyme and any comparison to transgenic or non-transgenic plants containing a different EPSPS enzyme;
- characterization, analysis and selection of events 40-3-2, NK603, GA21, 89788 and Roundup Ready Events¹, and the decision to commercialize those events; and
- the negotiations, drafts, course of dealing and internal analyses related to the key agreements.

DuPont requests that the Court compel Monsanto to produce these categories of documents on an expedited time frame to prevent further delay. DuPont also requests that the Court stay DuPont's depositions of Monsanto's witnesses until at least ten days after Monsanto confirms it has produced all required discovery for each respective deponent.

¹ The "Roundup Ready Events" specifically refers to the events transformed into plants to create glyphosate tolerance and expressly included in this category are: ASR368, ZSR500/502, GTSB77, H7-1, GT200, GT 73, RT73, MON144571698, MON88913, J101, J163, MON832, MON71800. *See* APHIS Approvals of these events, available at http://www.aphis.usda.gov/brs/not_reg.html; *see also* GM Crop Database at http://cera-gmc.org/index.php?evidcode=&hstIDXCode=&gType=HT&AbbrCode=&atCode=&stCode=&coIDCode=&action=gm_crop_database&mode=Submit.

DuPont incorporates by reference its memorandum in support filed concurrently herewith.

Pursuant to Local Rule 3.04, the parties have participated in numerous meet and confers regarding Monsanto's responses to DuPont's discovery and have exchanged no less than ten letters since the middle of November regarding these issues. DuPont is forced to seek relief in the present motion because Monsanto's delinquencies have now progressed well past the Court's document production deadline and Monsanto's continued failure to produce these documents seriously jeopardizes the Court's scheduling order and is causing DuPont significant prejudice

WHEREFORE, DuPont respectfully moves the Court for an Order compelling Monsanto to produce documents in response to DuPont's discovery requests identified in this motion and the accompanying memorandum in support within 10 days of the Court's Order or other expedited basis as the Court deems appropriate.

Dated: December 23, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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